

MINUTES
(Unofficial until approved)
Jury Standards Committee
Supreme Court Front Conference Rm/ Conference Call, Bismarck
August 22, 2014

Members Present

Judge Steven Marquart, Chair
Sally Holewa
Judge James Hovey
Robin Huseby
Judge Gary Lee
Rod Olson
Lois Scharnhorst

Members Absent

Birch Burdick
Judge Cynthia Feland
Monte Rogneby
Michael Waller

Others Present

Judge Robin Schmidt
Judge David Nelson
Jodee Lawlar
Ross Munns
Carolyn Probst

Chair Marquart called the meeting to order at 12 Noon and drew Committee members' attention to the minutes of the May 16 meeting (meeting material, pp. 1-4).

It was moved by Judge Lee, seconded by Judge Hovey, and carried that the minutes be approved.

Jury Selection Issues - McKenzie County and Surrounding Area

Chair Marquart welcomed Judge Robin Schmidt, chambered in Watford City; Judge David Nelson, Presiding Judge, Northwest Judicial District; and Jodee Lawlar, McKenzie County Clerk of District Court, for comments regarding jury selection in areas affected by the oil boom.

Judge Schmidt said there is increasing difficulty in summoning an adequate number of prospective jurors for cases. She said one possible method of enhancing the jury pool size may be to include utility customers, particularly in McKenzie County, in the source lists from which prospective jurors are summoned. She said the applicable statute, N.D.C.C. §27-09.1-05, identifies utility customer lists as a possible source of names for compiling the master jury list.

In response to a question from Judge Marquart, Judge Schmidt said problems with jury selection have been most acute in McKenzie County.

Minutes
Jury Standards Committee
May 16, 2014

Staff noted that a possible impediment to using utility customer lists is that, given the number of transient workers in the area, a person on the list may not be a county resident.

Judge Lee said residency is generally determined by a union of intent, action, and time in place. He said people in the area, even transient workers, are spending a good deal of time in the county and using public resources. It might be argued, he said, that the residency requirement has been satisfied.

Jodee Lawlar explained that in two recent jury trials approximately ninety names were selected but only thirty-two qualification forms were returned.

Sally Holewa asked whether any information had been gathered regarding who has been summoned and the reasons for not responding. She said if the non-response rate is not analyzed and resolved, then it likely would not help to expand the list.

In response to a question from Judge Marquart, Judge Schmidt said the reasons for not responding are unclear. She noted that many of those summoned have been excused due to age, illness, or other reasons. She said research would be conducted to determine general reasons why those summoned are not responding.

Ross Munns, Unit 3 Assistant Court Administrator, noted that the practice of the Department of Transportation has changed to obtaining only physical address information and not including P.O. box addresses for drivers.

Judge Marquart agreed that the specific nature of the problem, that is, why those summoned are not responding, should be determined. Judge Schmidt agreed but said there is the more immediate problem of inadequate juror numbers that requires attention.

Sally Holewa said utility providers could be contacted to determine their willingness to release customer information and how the information could be obtained if shared.

Judge Schmidt said the discussion could move forward on two fronts: identify the reasons for not responding while contacting utility providers. Committee members agreed.

Judge Nelson asked how long a change in list composition would take it is possible to acquire the utility customer information. General consensus was that several months would likely be required to coordinate with utility providers, obtain the customer information, and determine how the information can be incorporated in the current process.

Minutes
Jury Standards Committee
May 16, 2014

Judge Schmidt said she and Jodee Lawlar would conduct the analysis of non-responders.

Sally Holewa will contact utility providers about the possibility of obtaining customer lists.

Chair Marquart said the issue will be held over for further discussion at the next meeting.

Juror Compensation

Chair Marquart summarized the Committee's previous discussion regarding possible changes to the juror compensation rate.

Sally Holewa summarized information regarding the fiscal impact of increasing juror compensation to a flat rate of \$50 per day (meeting material, p.7). She said the biennial cost would be about \$240,000.

Staff summarized the draft amendment to N.D.C.C. §27-09.1-14 which would reflect the change to the \$50 per day rate.

After further discussion, **it was moved by Judge Hovey, seconded by Judge Lee, and carried that the Committee recommend the \$50 per day rate and related legislative amendment to the Supreme Court for consideration.**

Jury User Group Issues

Ross Munns summarized various jury managements issues identified by the Jury User Group and set out in his email preceding the last meeting (meeting material, pp.9-11).

He said the first issue concerns the naming of the form used to qualify jurors. He said the form is currently described as the "Juror Questionnaire", which confusing in that juror questionnaires are also used by attorneys during the juror selection process. He said the relevant statute refers to a "juror qualification form". Committee members agreed the form name should match the statute description.

The second issue, he said, concerns the qualification form's instruction that the person must return the form "within 5 days". He said the relevant statute, N.D.C.C. §27-09.1-07(1), directs that the form must be returned within ten days after receipt. It was noted that the statute requires return "within" ten days, which does not necessarily disallow requesting return within five days.

Minutes
Jury Standards Committee
May 16, 2014

Lois Scharnhorst observed that she sends summons early enough that the ten day requirement is not really a concern. She cautioned that if people are explicitly given ten days to respond, the tendency may be to put off responding. Rod Olson agreed.

Sally Holewa suggested modifying the instruction in the form (meeting material, p. 12) to read: "According to State Law, you must answer the questions on this form. Sign and return within 5 days". The change would not then link the five day response period to "state law".

It was moved by Rod Olson, seconded by Lois Scharnhorst, and carried that the form be modified in the manner described.

Ross Munns said the third issue concerns use of the state identification card issued by DOT. He explained that identification card information is currently included in compilation of the juror master list. He suggested that state identification cards be added to Section IV(A) of the Jury Selection Plan, which describes the information lists used to develop the master jury list.

It was moved by Judge Hovey, seconded by Lois Scharnhorst, and carried that Section IV(A) of the Jury Selection Plan be modified as described.

Ross Munns said the fourth issue concerns Section VIII of the Jury Selection Plan and the description of the number of jurors to be summoned. He said the baseline approach is that the number summoned should equal number of jurors needed + number of alternates + number of allowed peremptories + two. He said the typical jury yield is about 50-55% and, as a result, it is probably not realistic to summon close to what is the exact juror need. He said the selection plan direction is not typically followed because to do so would most often result in too few jurors being summoned. He suggested the Section VIII guideline should be modified to more closely reflect actual practice.

Committee members agreed the issue should be reserved for further discussion.

Ross Munns said the fifth issue concerns a possible clarifying definition of what constitutes juror "service". It was noted that the issue was discussed at the previous meeting in light of the one day/one trial concept. The conclusion was that the question of what is considered "service" is better left to a county by county or district by district determination.

Chair Marquart said the issue appears to not require further discussion. Committee members agreed.

Jury Website Demonstration

Minutes
Jury Standards Committee
May 16, 2014

Sally Holewa explained that there were several problems with jury service information currently available on the Supreme Court's website. As a result, she said the Jury User Group had initiated a project to develop a separate website location for jury service information.

Ross Munns then provided a demonstration of the test website, which is intended to provide a more user-friendly source of information about jury service. The test jury site can be located at <http://test.ndcourts.gov/jury>. He suggested that Committee members review the test site and offer any comments regarding its usefulness and any possible improvements.

There being no further business, the meeting was adjourned at 1:00 p.m.

Jim Ganje, Staff